

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 988

Introduced by Senator ~~Hollingsworth~~ Huff

(Principal coauthor: Assembly Member Logue)

*(Coauthors: Senators Aanestad, Cogdill, Cox, Dutton, Hollingsworth,
and Runner)*

February 8, 2010

~~An act to amend Section 511 of the Labor Code, relating to employment.~~ *An act to add Section 11349.95 to the Government Code, relating to regulations, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 988, as amended, ~~Hollingsworth Huff. Employment: alternative workweek schedules.~~ *Regulations: 5-year review and report.*

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

This bill would require the Office of Administrative Law to review and report on each regulation, before May 1 of the 5th year after the regulation was amended or adopted that the State Energy Resources and Development Commission, the Public Utilities Commission, the California Consumer Power and Conservation Financing Authority, or any other state agency that has duties relating to state energy regulations or the implementation of those regulations adopts or amends on or after January 1, 2011. The bill would require the review and report to include specified factors, including a summary of the written criticisms received by the agency that adopted or amended the regulation within the preceding 5 years and the estimated economic,

small business, and consumer impact of the regulation, as specified. The bill would require the office to make the report available on its Internet Web site.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law authorizes an employer to propose an alternative workweek schedule, as defined, that may be either a single, standard work schedule or part of a menu of work schedule options offered to the employees. Under existing law, approval by secret ballot election of at least $\frac{2}{3}$ of the affected employees in a work unit is required for adoption of an alternative workweek schedule.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11349.95 is added to the Government
- 2 Code, to read:
- 3 11349.95. (a) The applicability of this section is limited to the
- 4 State Energy Resources Conservation and Development
- 5 Commission, the Public Utilities Commission, the California
- 6 Consumer Power and Conservation Financing Authority, and any
- 7 other state agency that has duties relating to state energy
- 8 regulations or the implementation of those regulations.
- 9 (b) (1) The Office of Administrative Law, on behalf of a state
- 10 agency included in subdivision (a), shall review and report on any
- 11 regulation that an agency included in subdivision (a) adopts or
- 12 amends on and after January 1, 2011, as required by this section.
- 13 The review and report shall be completed by the office on or before
- 14 May 1 immediately following five years after the date the regulation
- 15 was adopted or amended.
- 16 (2) The office shall make a report required by paragraph (1)
- 17 available on its Internet Web site.
- 18 (c) The review and report required by this section shall include
- 19 all of the following factors:
- 20 (1) The general and specific statutes authorizing the regulation.
- 21 (2) The objective of the regulation.
- 22 (3) The effectiveness of the regulation in achieving the objective.

1 (4) *The consistency of the regulation with state and federal*
2 *statutes and regulations and a listing of the statutes or regulations*
3 *used in determining the consistency.*

4 (5) *The enforcement policy of the agency that adopted or*
5 *amended the regulation, including whether the regulation is*
6 *currently being enforced and, if so, whether there are any problems*
7 *with enforcement.*

8 (6) *The view of the agency that adopted or amended the*
9 *regulation regarding the current wisdom of the regulation.*

10 (7) *The clarity, conciseness, and understandability of the*
11 *regulation.*

12 (8) *A summary of the written criticisms of the regulation*
13 *received by the agency that adopted or amended the regulation*
14 *within the five years immediately preceding the office's five-year*
15 *review report, including letters, memoranda, reports, and written*
16 *allegations made in litigation or administrative proceedings to*
17 *which the agency was a party, any indication that the regulation*
18 *is discriminatory, unfair, unclear, inconsistent with statute, or*
19 *beyond the authority of the agency to enact, and the status or result*
20 *of the litigation or administrative proceedings.*

21 (9) *The estimated economic, small business, and consumer*
22 *impact of the regulation as compared to the economic, small*
23 *business, and consumer impact statement prepared on the last*
24 *making of the regulation, or, if no economic, small business, and*
25 *consumer impact statement was prepared on the last making of*
26 *the rule, an assessment of the actual economic, small business,*
27 *and consumer impact of the regulation.*

28 (10) *The course of action the agency that adopted or amended*
29 *the regulation proposes to take regarding the regulation, including*
30 *the month and year in which the agency anticipates submitting the*
31 *rules to the office if the agency determines it is necessary to amend*
32 *or repeal an existing rule, or to make a new rule.*

33 (d) *In response to the office's review and report required*
34 *pursuant to paragraph (1) of subdivision (b), the agency that*
35 *adopted or amended the regulation may do any of the following:*

36 (1) *Do nothing, in which case the regulation will cease to be*
37 *operative as of 2 years after the date the office issued the report.*

38 (2) *Implement the recommendations of the office.*

39 (3) *Develop its own plan to redress the concerns noted by the*
40 *office in the report.*

1 *SEC. 2. This act is an urgency statute necessary for the*
2 *immediate preservation of the public peace, health, or safety within*
3 *the meaning of Article IV of the Constitution and shall go into*
4 *immediate effect. The facts constituting the necessity are:*

5 *In order to accelerate the creation of jobs in this state so that*
6 *the ongoing economic crisis may be immediately addressed, it is*
7 *necessary that this act take effect immediately.*

8 ~~SECTION 1. Section 511 of the Labor Code is amended to~~
9 ~~read:~~

10 ~~511. (a) Upon the proposal of an employer, the employees of~~
11 ~~an employer may adopt a regularly scheduled alternative workweek~~
12 ~~that authorizes work by the affected employees for no longer than~~
13 ~~10 hours per day within a 40-hour workweek without the payment~~
14 ~~to the affected employees of an overtime rate of compensation~~
15 ~~pursuant to this section. A proposal to adopt an alternative~~
16 ~~workweek schedule shall be deemed adopted only if it receives~~
17 ~~approval in a secret ballot election by at least two-thirds of affected~~
18 ~~employees in a work unit. The regularly scheduled alternative~~
19 ~~workweek proposed by an employer for adoption by employees~~
20 ~~may be a single work schedule that would become the standard~~
21 ~~schedule for workers in the work unit, or a menu of work schedule~~
22 ~~options, from which each employee in the unit would be entitled~~
23 ~~to choose.~~

24 ~~(b) An affected employee working longer than eight hours but~~
25 ~~not more than 12 hours in a day pursuant to an alternative~~
26 ~~workweek schedule adopted pursuant to this section shall be paid~~
27 ~~an overtime rate of compensation of no less than one and one-half~~
28 ~~times the regular rate of pay of the employee for any work in excess~~
29 ~~of the regularly scheduled hours established by the alternative~~
30 ~~workweek agreement and for any work in excess of 40 hours per~~
31 ~~week. An overtime rate of compensation of no less than double~~
32 ~~the regular rate of pay of the employee shall be paid for any work~~
33 ~~in excess of 12 hours per day and for any work in excess of eight~~
34 ~~hours on those days worked beyond the regularly scheduled~~
35 ~~workdays established by the alternative workweek agreement.~~
36 ~~Nothing in this section requires an employer to combine more than~~
37 ~~one rate of overtime compensation in order to calculate the amount~~
38 ~~to be paid to an employee for any hour of overtime work.~~

1 ~~(e) An employer shall not reduce an employee's regular rate of~~
2 ~~hourly pay as a result of the adoption, repeal, or nullification of~~
3 ~~an alternative workweek schedule.~~

4 ~~(d) An employer shall make a reasonable effort to find a work~~
5 ~~schedule not to exceed eight hours in a workday, in order to~~
6 ~~accommodate an affected employee who was eligible to vote in~~
7 ~~an election authorized by this section and who is unable to work~~
8 ~~the alternative schedule hours established as the result of that~~
9 ~~election. An employer shall be permitted to provide a work~~
10 ~~schedule not to exceed eight hours in a workday to accommodate~~
11 ~~any employee who was hired after the date of the election and who~~
12 ~~is unable to work the alternative schedule established as the result~~
13 ~~of that election. An employer shall explore any available reasonable~~
14 ~~alternative means of accommodating the religious belief or~~
15 ~~observance of an affected employee that conflicts with an adopted~~
16 ~~alternative workweek schedule, in the manner provided by~~
17 ~~subdivision (j) of Section 12940 of the Government Code.~~

18 ~~(e) The results of an election conducted pursuant to this section~~
19 ~~shall be reported by an employer to the Division of Labor Statistics~~
20 ~~and Research within 30 days after the results are final.~~

21 ~~(f) Any type of alternative workweek schedule that is authorized~~
22 ~~by this code and that was in effect on January 1, 2000, may be~~
23 ~~repealed by the affected employees pursuant to this section. An~~
24 ~~alternative workweek schedule that was adopted pursuant to Wage~~
25 ~~Order Number 1, 4, 5, 7, or 9 of the Industrial Welfare Commission~~
26 ~~is null and void, except for an alternative workweek providing for~~
27 ~~a regular schedule of no more than 10 hours' work in a workday~~
28 ~~that was adopted by a two-thirds vote of affected employees in a~~
29 ~~secret ballot election pursuant to wage orders of the Industrial~~
30 ~~Welfare Commission in effect prior to 1998. This subdivision does~~
31 ~~not apply to exemptions authorized pursuant to Section 515.~~

32 ~~(g) Notwithstanding subdivision (f), an alternative workweek~~
33 ~~schedule in the health care industry adopted by a two-thirds vote~~
34 ~~of affected employees in a secret ballot election pursuant to Wage~~
35 ~~Order Numbers 4 and 5 in effect prior to 1998 that provided for~~
36 ~~workdays exceeding 10 hours but not exceeding 12 hours in a day~~
37 ~~without the payment of overtime compensation shall be valid until~~
38 ~~July 1, 2000. An employer in the health care industry shall make~~
39 ~~a reasonable effort to accommodate an employee in the health care~~
40 ~~industry who is unable to work the alternative schedule established~~

1 as the result of a valid election held in accordance with provisions
2 of Wage Order Number 4 or 5 that were in effect prior to 1998.
3 (h) Notwithstanding subdivision (f), if an employee is
4 voluntarily working an alternative workweek schedule providing
5 for a regular work schedule of not more than 10 hours' work in a
6 workday as of July 1, 1999, an employee may continue to work
7 that alternative workweek schedule without the entitlement of the
8 payment of daily overtime compensation for the hours provided
9 in that schedule if the employer approves a written request of the
10 employee to work that schedule.